

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34562]

Norfolk Southern Railway Company — Trackage Rights Exemption — Delaware and Hudson Railway Company, Inc.

Pursuant to a trackage rights agreement dated September 30, 2004, between Norfolk Southern Railway Company (NSR) and Delaware and Hudson Railway Company, Inc. (D&H),<sup>1</sup> D&H has agreed to grant NSR approximately 155.24 miles of overhead trackage rights over the following lines: (1) between milepost 37.10± of D&H's Canadian Main Line in Saratoga Springs, NY, and the point of connection between D&H's Canadian Main Line and D&H's Freight Main Line at CPF 480, located at milepost 21.70± of D&H's Canadian Main Line, a total distance of approximately 15.4 miles; (2) between milepost 480.36± and milepost 611.15± of D&H's Freight Main Line in Binghamton, NY, a distance of approximately 130.79 miles; and (3) between milepost 611.15± and milepost 620.20± of D&H's Freight Main Line (including tracks into and within D&H's East Binghamton Yard) in Binghamton, NY, a distance of approximately 9.05 miles.

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<sup>1</sup> A redacted version of the trackage rights agreement between NSR and D&H was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order was served on October 8, 2004.

The transaction was scheduled to be consummated on or after the anticipated October 8, 2004 effective date of this exemption.<sup>2</sup>

The purpose of the trackage rights is to allow for: (1) the overhead movement between Saratoga Springs and Binghamton of trains by NSR, which are currently handled by D&H for NSR's account between Saratoga Springs and Rouses Point, NY, pursuant to a haulage agreement between NSR and D&H, and (2) movements over D&H's terminal trackage, including within D&H's East Binghamton Yard. Additionally, traffic moved by the trackage rights will be blocked and switched in D&H's East Binghamton Yard pursuant to a switching agreement between NSR and D&H.

As a condition of this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

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<sup>2</sup> By decision served on October 7, 2004, the effective date of the exemption was stayed until October 27, 2004, to allow for review of certain documents, filing of a petition to revoke, and the Board's consideration of the stay request filed in this proceeding. Accordingly, consummation of the transaction cannot occur until October 27, 2004.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34562, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Richard A. Allen, Zuckert, Scoutt & Rasenberger LLP, 888 Seventeenth Street, Suite 600, Washington, DC 20006-3939.

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Decided: October 13, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary